



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/1191

Re: Flat 2/1 36 Luggiebank Road, Kirkintilloch G66 1LR (“the Property”)

Parties:

Michael McGale and Neelum Anwar, Flat 2/1 36 Luggiebank Road, Kirkintilloch G66 1LR (“Applicant”)

Jasbir Sandhu, 31 Cortmalaw Gardens, Glasgow G33 1TJ (“Respondent”)

Ritehome, 350 Glasgow Harbour Terraces, Glasgow G11 6EG (“Respondent’s Representative”)

Tribunal Members:

Joan Devine (Legal Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £225.

Background

1. The Applicant made an application in Form G (“Application”) dated 12 March 2024 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“Rules”) stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“2011 Regulations”). The documents produced to the Tribunal by the Applicant were:

- A private residential tenancy agreement (“PRT”) between the Applicant and the Respondent which commenced on 1 January 2024.
- Copy screenshots from websites for Mydeposits Scotland, Letting Protection Scotland and Safe Deposits Scotland stating they did not hold the Applicant’s deposit for the Property.

- Screenshot of a bank transfer of £650 made on 29 December 2023.
2. The Tribunal had sight of a sheriff officer certificate of service which stated that the Application was served on the Respondent on 18 June 2024. On 24 June 2024 the Applicant lodged a written submission which attached copy emails from the Respondent's Representative. On 4 July 2024 the Respondent's Representative lodged a written submission which included a certificate showing that the deposit had been lodged with Safe Deposits Scotland on 19 June 2024.

Case Management Discussion ("CMD")

3. A CMD took place on 25 July 2024 by conference call. Both Applicants were in attendance as was Robert Nixon of the Respondent's Representative.
4. Mr McGale told the Tribunal that the deposit of £650 was paid on 29 December 2023 and the first rental payment was paid by standing order on 1 January 2024. Mr Nixon confirmed that was agreed. The Tribunal noted that the deposit was not lodged in an approved scheme until some 4 months after it should have been lodged. Mr Nixon confirmed that was agreed.
5. The Tribunal noted the terms of the submission lodged by the Respondent's Representative which explained that the employee responsible for lodging deposits had an operation on 29 December 2023 which did not go to plan and resulted in her being hospitalised for some weeks. Mr Nixon said that the accounts manager had sole responsibility for lodging deposits but now another member of staff had been trained to deal with lodging deposits so that the same set of circumstances would not happen again. He said that as soon as the Respondent's Representative became aware that the deposit had not been protected they proceeded to lodge it in a scheme. He said that the Respondent's Representative became aware of the situation after the Application was served on the Respondent and he brought the papers into the office of the Respondent's Representative. Mr Nixon told the Tribunal that the Respondent's Representative would be paying whatever sum the Tribunal awarded. He said that the Respondent owns a number of rental properties. He said the Respondent's Representative manages 15 of the properties and the deposits for each property are lodged in approved schemes. He said that it is part of the Respondent's Representatives role in managing the properties to lodge the deposits in an approved scheme.
6. The Tribunal asked Mr McGale what level of compensation he sought. He said that he wanted to ensure the deposit was protected and that he wanted the Tribunal to award whatever sum it thought appropriate.

7. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 1 January 2024.
2. The Applicant paid to the Respondent a deposit of £650 on 29 December 2024.
3. The deposit was not paid to the administrator of an approved scheme within 30 working days of the beginning of the tenancy in compliance with the 2011 Regulations.
4. At the time of receiving the deposit the member of staff at the Respondent's Representative responsible for lodging deposits was in hospital.
5. The deposit was lodged with the administrator of an approved scheme and was protected from 19 June 2024.

Relevant Legislation

8. Regulation 3 of the 2011 Regulations provides *inter alia* :

"(1) A Landlord who has received a tenancy deposit in connection with a relevant tenancy must within 30 working days of the beginning of the tenancy–

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the Tenant with the information required under Regulation 42.."

9. Regulation 9 of the 2011 Regulations provides:

"(i) A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.

(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."

10. Regulation 10 of the 2011 Regulations provides *inter alia* :

"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal –

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit"

Reasons for the Decision

11. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit with an approved scheme within the required timescale. This was accepted by the Respondent's Representative.

12. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."

13. The Tribunal noted that the Respondent, via his Representative, admitted that there had been a breach of the 2011 Regulations. There was no evidence before the Tribunal of repeated breaches, fraudulent intent or deliberate failure

to observe responsibilities. The explanation given for the failure to comply with the 2011 Regulations was that the employee at the Respondent's Representative who dealt with the lodging of deposits had been in hospital for some weeks after an operation on 29 December 2023 did not go to plan. The Tribunal accepted the explanation provided for the Respondent's non-compliance and was of the view that there were no aggravating factors present in this case of the sort described in *Rollett v Mackie*. The Deposit was now protected although it had been protected some 4 months later than it should have been.

14. Having regard to factors put forward by both parties the Tribunal determined that the sanction should be £225 in the particular facts and circumstances of this case which is slightly more than one third of the deposit amount.

Decision

The Tribunal granted an Order for payment of £225 in terms of Regulation 10(a) of the 2011 Regulations.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

J.Devine

Legal Member

Date: 25 July 2024